

1  
2  
3  
4  
5  
6  
7 DAVE NAGY,  
8 Plaintiff,  
9 v.  
10 GROUP LONG TERM DISABILITY PLAN  
11 FOR EMPLOYEES OF ORACLE  
12 AMERICA, INC., et al.,  
13 Defendants.

14 Case No. 14-cv-00038-HSG

15 **ORDER REGARDING SELECTION OF  
16 AN INDEPENDENT EXPERT**

17 In this action, Dave Nagy seeks long term disability benefits due to the symptoms of  
18 Chronic Fatigue Syndrome (“CFS”), which he claims renders him totally disabled under the  
19 ERISA plan administered by the Defendants. Determining whether a claimant is disabled due to  
20 the symptoms of CFS is a task that has vexed many courts. This is because “[t]here is no blood  
21 test or other objective laboratory test for chronic fatigue syndrome.” *Salomaa v. Honda Long*  
22 *Term Disability Plan*, 642 F.3d 666, 676 (9th Cir. 2011). Instead, “[t]he standard diagnosis  
23 technique for [CFS] includes testing, comparing symptoms to a detailed Centers for Disease  
Control list of symptoms, excluding other possible disorders, and reviewing thoroughly the  
patient’s medical history.” *Id.* While there is no dispute that Nagy has been diagnosed with CFS,  
the administrative record in this case contains little to no expert opinion on whether the severity of  
Nagy’s CFS-related symptoms render him unable to work.

24 Accordingly, pursuant to the authority recognized by the Ninth Circuit in *Muniz v. Amec*  
25 *Construction Management, Inc.*, 623 F.3d 1290, 1294 (9th Cir. 2010), the Court finds that the  
26 retention of an independent expert to evaluate Nagy’s functional capacity is warranted. The  
27 parties are directed to meet and confer regarding the potential experts and file a stipulation  
28 agreeing to an expert by no later than **21 days** from the date of this order. If no agreement can be

1 reached, the parties must each file a brief of no more than five pages by the same deadline. Briefs  
2 must propose an expert for the court to consider, disclose why the parties could not agree on a  
3 single expert, and explain why the party's proposed expert should be selected.

4 **IT IS SO ORDERED.**

5 Dated: 9/14/2015

6  
7   
8 HAYWOOD S. GILLIAM, JR.  
9 United States District Judge

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

United States District Court  
Northern District of California